UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

FILED

AUG 16 2024

CLERK, U.S. DISTRICT COURT

DEPUTY CLERK

ROBERT IGNACIO SANCHEZ BENITEZ, #48255-480

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

SA-23-CV-1242-OLG SA-20-CR-263-OLG-1

ORDER

Before the Court is Movant Robert Ignacio Sanchez Benitez's Motion pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion") to vacate, set aside, or correct sentence (ECF No. 68); the Government's sealed Response in opposition thereto (ECF No. 76); and the Report and Recommendation of United States Magistrate Judge Richard B. Farrer. (ECF No. 91). For the following reasons, the Report and Recommendation is accepted and adopted, and the § 2255 Motion is **DISMISSED WITHOUT PREJUDICE**.

In his § 2255 Motion, Sanchez Benitez alleges, among other things, that his plea counsel, Edgardo R. Baez, rendered ineffective assistance by failing to file a notice of appeal. Upon review of the pleadings, the Court referred the § 2255 Motion to U.S. Magistrate Judge Richard B. Farrer, pursuant to the authority vested in the United States Magistrate Judges by 28 U.S.C. § 636 and Appendix C of the Local Rules for the Assignment of Duties to the United States Magistrates, for the purpose of holding an evidentiary hearing and submitting a report and recommendation as to Sanchez Benitez's claim that Mr. Baez rendered ineffective assistance by failing to file a notice of appeal. (ECF No. 77).

Judge Farrer held an evidentiary hearing on the § 2255 Motion, at which counsel for both parties appeared. (ECF Nos. 88 & 90). Sanchez Benitez appeared personally, and Mr. Baez testified as a witness. Following the hearing, Judge Farrer issued a Report and Recommendation concluding that Mr. Baez rendered ineffective assistance of counsel for failing to adequately consult with Sanchez Benitez about an appeal. (ECF No. 91). Accordingly, Judge Farrer recommends that this Court dismiss the § 2255 Motion without prejudice and grant Sanchez Benitez an out-of-time appeal. Judge Farrer further recommends that this Court appoint attorney George William Aristotelidis to represent Sanchez Benitez on appeal.

Pursuant to 28 U.S.C. § 636(b), a party may serve and file specific, written objections to the proposed findings and recommendations of the Magistrate Judge within fourteen days after being served with a copy of the Report and Recommendation and secure a de novo review by the district court. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendations in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

All parties were notified of the Report and Recommendation and informed of the consequences of a failure to file objections. To date, no party has filed objections to the findings of fact and conclusions of law in the Report and Recommendation. The Court, having reviewed the record and finding no plain error, accepts and adopts the Report and Recommendation of the Magistrate Judge.

Accordingly,

IT IS ORDERED that the Report and Recommendation of the United States Magistrate Judge (ECF No. 91) is ACCEPTED AND ADOPTED, and Movant Robert Ignacio Sanchez Benitez's Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255 (ECF No. 68) is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Sanchez Benitez is GRANTED AN OUT-OF-TIME APPEAL.

IT IS FURTHER ORDERED that attorney George William Aristotelidis is appointed to represent Sanchez Benitez on appeal.

IT IS FURTHER ORDERED that the Clerk of Court re-enter the criminal judgment on the docket, thereby restarting the time for appeal under Federal Rule of Appellate Procedure 4(b)(1)(A). See United States v. Gaytan-Ortiz, 308 F. App'x 798, 800 (5th Cir. 2009) (citations omitted).

IT IS FURTHER ORDERED that all pending motions related to Sanchez Bentiez's Section 2255 Motion, if any, are DENIED AS MOOT, and this case is now CLOSED.

IT IS FINALLY ORDERED that, to the extent necessary, a certificate of appealability is **DENIED**.

It is so **ORDERED**.

SIGNED on this / day of August, 2024.

ORLANDO L. GARCIA UNITED STATES DISTRICT JUDGE